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Attorneys for Defendants New York Life Insurance Company and New York Life Insurance and Annuity Corporation

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

OLGA ORTMANN, as an individual
and on behalf of all others similarly
situated,

Case No. 3:07-CV-02506-WHA

**DEFENDANTS' NOTICE OF MOTION
TO STAY OR TRANSFER THIS
ACTION OR, IN THE ALTERNATIVE,
TO DISMISS PLAINTIFF'S FIRST,
SECOND, FOURTH AND SIXTH
THROUGH TWELFTH CAUSES OF
ACTION PURSUANT TO "THE
FIRST-TO-FILE" RULE**

Judge: Hon. William Alsup
Date: July 5, 2007
Time: 8:00 a.m.
Courtroom: 9, 19th Floor

NEW YORK LIFE INSURANCE COMPANY, a corporation; NEW YORK LIFE INSURANCE AND ANNUITY CORPORATION, a corporation; and DOES 1 through 20, inclusive

Defendants

1 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on July 5, 2007, at 8:00 a.m., or as soon
 3 thereafter as this matter may be heard in Courtroom 9 of the United States District
 4 Court for the Northern District of California, 450 Golden Gate Avenue, San
 5 Francisco, California 94102-3483, before the Honorable William Alsup,
 6 Defendants New York Life Insurance Company and New York Life Insurance and
 7 Annuity Corporation (“Defendants”) will and hereby does move for an order
 8 staying or transferring this action to the U.S. District Court for the Central District
 9 or California or, in the alternative, dismissing (1) the first cause of action for
 10 declaratory relief, (2) the second cause of action for alleged failure to pay minimum
 11 wages in violation of Cal. Labor Code § 1194, (3) the fourth cause of action for
 12 alleged failure to indemnify and illegal wage deductions in violation of Cal. Labor
 13 Code §§ 226 and 2802, (4) the sixth cause of action for alleged failure to pay
 14 compensation upon discharge in violation of Cal. Labor Code §§ 201-203, (5) the
 15 seventh cause of action for alleged failure to furnish itemized wage statements upon
 16 payment of wages in violation of Cal. Labor Code § 226, (6) the eighth cause of
 17 action for an accounting, (7) the ninth cause of action for unjust enrichment, (8) the
 18 tenth cause of action for conversion, (9) the eleventh cause of action for injunctive
 19 relief, and (10) the twelfth cause of action for violation of Cal. Bus. & Prof. Code
 20 §§ 17200 *et al.* pursuant to the “first-to-file” rule.

21 This motion is brought on the ground that a first-filed action now pending
 22 before the U.S. District Court for the Central District of California entitled *Justin*
 23 *Opyrchal v. New York Life Insurance Company, Inc., New York Life and Health*
 24 *Insurance Company, Inc. and New York Life Insurance and Annuity Corporation*,
 25 Case No. CV-07-518-VBF (VBKx) (“*Opyrchal Action*”) includes claims identical
 26 or substantially similar to those asserted by Plaintiff Olga Ortmann in the
 27 Complaint and concerns similar parties and requests for relief.

28

1 This motion is based on this notice, the accompanying memorandum of
2 points and authorities in support of the motion, the accompanying Declaration of
3 Jill A. Porcaro, the accompanying proposed order, the Court's file in this case, and
4 on all other matters which may be judicially noticed or adduced at the hearing of
5 this matter.

Dated: May 24, 2007

MORGAN, LEWIS & BOCKIUS LLP

By /s/ JILL A. PORCARO

Jill A. Porcaro
Attorneys for Defendants
New York Life Insurance Company
and New York Life Insurance and
Annuity Corporation